

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

TEKWELD SOLUTIONS, INC.
Employer

and

Case 29-RC-099621

WAREHOUSE PRODUCTION SALES
AND ALLIED SERVICES EMPLOYEES
UNION, LOCAL 811
Petitioner

ORDER

We grant the Employer's Request for Special Permission to Appeal the Regional Director's determination not to process the Employer's September 2, 2014 letter as an objection to the revised tally of ballots issued August 27, 2014. We deny the appeal on the merits.¹

PHILIP A. MISCIMARRA, MEMBER

KENT Y. HIROZAWA, MEMBER

HARRY I. JOHNSON, III, MEMBER

Dated, Washington, D.C., November 3, 2014.

¹ The Employer's letter argued that the revised tally of ballots should have included 23 challenged ballots that the Board previously determined should not be counted. See 361 NLRB No. 18 (2014). In denying the appeal, we do not rely on the Regional Director's statement that the conduct described in the Employer's letter falls outside of the time period for objections to a rerun election as provided in NLRB Casehandling Manual (Part Two) Representation Proceedings Sec. 11456.3. Rather, we rely on Sec. 11392.2(c), which provides that objections to a revised tally of ballots "should serve as the basis for investigation of only those circumstances leading up to and surrounding the revised count, *not those leading up to and surrounding the election itself*" (emphasis added). Here, the Employer's letter involves the circumstances surrounding the initial election, not the revised count. Member Miscimarra agrees with this disposition of the merits of the Employer's request for special permission to appeal. However, as expressed in his partial dissenting opinion when the Board addressed the Employer's exceptions to the Regional Director's disposition of challenged ballots, Member Miscimarra believes the Board should establish a new voter eligibility date and direct a new election in this case, or in the absence of a new election, count the 23 challenged ballots. *Tekweld Solutions*, 361 NLRB No. 18, slip op. at 3 (2014) (Member Miscimarra, dissenting in part).